UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AE-17J

SEP 25 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Lee Cunningham, Counsel
Archer Daniels Midland
4666 Faries Parkway
Decatur, Illinois 62526

Dear Mr. Cunningham:

Enclosed is a file stampled Consent Agreement and Final Order (CAFO) which resolves Clean Air Act violations alleged against Archer Daniels Midland at 4666 Faries Parkway, in Decatur, Illinois 62526 CAA Docket No. CAA-05-2006-0031. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 25 2006.

Pursuant to paragraph 61 of the CAFO, Archer Daniels Midland must pay the civil penalty with 30 days of SEP 25 2006. Your check must display the case docket number, CAA-05-2006-0031, and the billing document number, 2750603A010.

Please direct any questions regarding this case to Reginald Pallesen, Regional Counsel, (312) 886-0555.

Sincerely yours,

Bonnie Bush

Bonnie Bush, Acting Chief
Air Enforcement and Compliance Assurance Section (MI/WI).

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	Docket No. **CAA-05-2006-0031**
	)	
Archer Daniels Midland Company,	)	Proceeding to Assess a Civil
	)	Penalty under Section 113(d) of the Clean
Respondent.	)	Air Act, 42 U.S.C. § 7413(d)
	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Archer Daniels Midland Company (ADM), a corporation doing business in the State of Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interests and in the public interest.

6. ADM consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. ADM admits the jurisdictional allegations in this CAFO, and neither admits nor denies the factual allegations set out in this CAFO.

8. ADM waives its right to request a hearing as provided at 40 C.F.R. § 22.15©, any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pharmaceutical Production at 40 C.F.R. Part 63, Subpart GGG (the Pharma-MACT).

10. The NESHAP for Pharmaceutical Production was proposed on September 21, 1998, and became final on September 21, 2001. The owner or operator of an existing affected source must comply with the provisions of the Pharma-MACT no later than October 21, 2002. 40 C.F.R. § 63.1250(f).

11. The Pharma-MACT, at 40 C.F.R. § 63.1250(a), defines an affected source as manufacturing operations that: a) manufacture a pharmaceutical product; b) are located at a plant site that is a major source as defined in Section 112(a) of the Act; and c) process, use or produce Hazardous Air Pollutants (HAPs).

12. The Pharma-MACT sets out Applicability provisions at 40 C.F.R. § 63.1250, Definitions at 40 C.F.R. § 63.1251, and General Standards at 40 C.F.R. § 63.1252.

13. The Pharma-MACT provides Standards for Storage Tanks at 40 C.F.R. § 63.1253, Process Vents at 40 C.F.R. § 63.1254, Equipment Leaks at 40 C.F.R. § 63.1255, and Wastewater at 40 C.F.R. § 63.1256.

14. The Pharma-MACT specifies Test Methods and Compliance Procedures at 40 C.F.R. § 63.1257, Monitoring Requirements at 40 C.F.R. § 63.1258, and Recordkeeping Requirements at 40 C.F.R. § 63.1259.

15. The Pharma-MACT sets out Reporting Requirements at 40 C.F.R. § 63.1260, including, at 40 C.F.R. § 63.1260(f), that the owner or operator of an affected source submit a Notification of Compliance Status Report (NOCSR), within 150 days of the October 22, 2001, compliance date, demonstrating timely compliance with the applicable requirements set out above, and, at 40 C.F.R. § 63.1260(g), that the owner or operator of an affected source submit a Periodic report, within 240 days of due date of the Notification of Compliance Status Report, or as otherwise required.

16. The Pharma-MACT, at 40 C.F.R. § 63.4(a)(1), provides that no owner or operator subject to the provisions of this part shall operate any affected source in violation of this requirement of this part except under an extension of compliance granted by the appropriate authority, and, at 40 C.F.R. § 63.4(a)(2), that no owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required.

17. The Pharma-MACT, at 40 C.F.R. § 63.6(e)(3)(i), requires the owner or operator of an affected source to develop and implement a written startup, shutdown and malfunction plan

(SSMP) that describes procedures for operating and maintaining the source during periods of startup, shutdown and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard.

18. The Standards for Protection of Stratospheric Ozone, Recycling and Emissions Reduction are set out at 40 C.F.R. Part 82, Subpart F.

19. Pursuant to 40 C.F.R. § 82.159(b), the Stratospheric Ozone Standards at 40 C.F.R. Part 82, Subpart F, apply to any person servicing, maintaining, repairing, or owning appliances, as those terms are defined at 40 C.F.R. § 82.152.

20. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.152, define "industrial process refrigeration" as "complex customized appliances used in the chemical ... industries ... [that] are directly linked to the industrial process."

21. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(2), require the owners or operators of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant to repair leaks if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period. Repairs must bring annual leak rates to below 35 percent during a 12-month period.

22. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(3), require owners or operators of industrial process refrigeration equipment to conduct an initial verification test at the conclusion of the repairs and a follow-up verification test. The follow-up verification test must be conducted within 30 days of completing the repairs or 30 days of bringing the appliance back on-line, but no sooner than when the appliance has achieved normal operating characteristics and conditions.

23. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.166(m), require that all relevant records be maintained and kept for a minimum of three years unless otherwise indicated.

24. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.166(o), require owners or operators of appliances to maintain on-site and timely report to U.S. EPA the following information, in accordance with 40 C.F.R. § 82.156(i)(7) and (i)(8). This information must be relevant to the affected appliance and must include:

> (1) the identification of the industrial process facility;
> (2) the leak rate;
> (3) the method used to determine the leak rate and full charge;
> (4) the date a leak rate above the applicable allowable rate was discovered;
> (5) the locations of leaks;
> (6) any repair work that has been completed and the date work was completed;
> (7) a plan to complete the retrofit or retirement of the system;
> (8) the reasons why more than one year is necessary to retrofit or retire the system;
> (9) the date of notification to U.S. EPA; and
> (10) an estimate of when retrofit or retirement work will be completed; timely notification of any changes in the estimated date of completion; and documentation of the reason for the changes.

25. ADM constructed a vitamin E manufacturing facility at its Decatur plant pursuant to a Joint Construction and Operating Permit issued December 22, 1993, by Illinois EPA, and began operation in 1994.

26. On October 22, 1998, Illinois EPA issued a PSD Construction Permit No. 93120004 to ADM for its vitamin E manufacturing facility. Condition 10(ii) of that Permit requires visual inspections of all air pollution particulate matter control equipment to be conducted on at least a weekly basis. Permit Condition 10(iv) requires that records of such inspections be kept on site.

27. On August 18, 2004, Illinois EPA issued to ADM a Title V Clean Air Act Permit and a Title I Permit for ADM's Decatur plant. This TitleV/Title I Permit adopted all applicable requirements established in the Construction and Operating Permits for the vitamin E manufacturing facility and specifically incorporated by reference the State Operating and Construction Permits for the vitamin E facility.

28. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to $27,500 per day of violation up to a total of $220,000 for NESHAP violations that occurred from January 31, 1997, through March 15, 2004, and may assess a civil penalty of up to $32,500 per day of violation up to a total of $270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

29. The Administrator may assess a penalty greater than $220,000 or $270,000 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. Section 113(d)(1) of the Act and 40 C.F.R. Part 19.

30. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

31. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than

$270,000 and a period of violations beginning more that 12 months prior to the initiation of this action is appropriate for an administrative penalty action.

Facts

32. ADM owns and operates a grain processing plant at 4666 Faries Parkway in Decatur, Illinois 62526. In the Decatur West Complex at the plant, ADM has a manufacturing operation that produces vitamin E, a pharmaceutical product within the meaning of the NESHAP for Pharmaceuticals Production. The ADM Decatur plant site is a major source as defined in Section 112(a) of the Act. And, ADM uses HAPs at various stages of its pharmaceutical manufacturing process. Therefore, the ADM vitamin E manufacturing operation is subject to the requirements of the NESHAP for Pharmaceuticals Production at 40 C.F.R. Part 63, Subpart GGG.

33. On January 19, 1999, ADM submitted an Initial Notification stating that it was evaluating applicability of the NESHAP for Pharmaceuticals Production to the Decatur vitamin E manufacturing operation.

34. ADM failed to submit a Pre-Compliance Report regarding the vitamin E manufacturing operation at the Decatur plant and failed to determine whether the vitamin E manufacturing operation was subject to the requirements of the NESHAP for Pharmaceuticals Production by the October 21, 2002, compliance date.

35. ADM failed to submit a Notification of Compliance Status Report for the vitamin E manufacturing operation at the Decatur plant within 150 days of the October 21, 2002, compliance date.

36. ADM failed to submit a Periodic Report for the vitamin E manufacturing operation at the Decatur plant within 240 days of due date of the NOCSR.

37. ADM operates nine process chillers in the vitamin E manufacturing operation at the Decatur plant, each containing more than 50 pounds of chlorofluorocarbon (CFC) refrigerant, a Class II ozone depleting substance. ADM's chillers constitute industrial process refrigeration equipment. Therefore, the chillers at ADM's vitamin E manufacturing facility are subject to the Stratospheric Ozone Standards at 40 C.F.R. Part 82, Subpart F.

38. ADM's vitamin E manufacturing operation at the Decatur plant is subject to the requirements of PSD Construction Permit No. 93120004, and the requirements of Title V and Title I Permit No. 96030038.

39. A baghouse associated with the vitamin E manufacturing operation at the Decatur plant constitutes "air pollution particulate matter control equipment," as defined in ADM's PSD Permit No. 93120004 and Title V/Title I Permit No. 96030038.

40. On December 6 and 7, 2004, U.S. EPA conducted a compliance inspection at ADM's Decatur vitamin E manufacturing facility.

41. On December 10, 2004, ADM submitted a letter to U.S. EPA disclosing potential violations of the NESHAP for Pharmaceuticals Production, the Stratospheric Ozone Standards, and permit requirements for inspection and recordkeeping of air pollution particulate matter control equipment regarding the vitamin E manufacturing operation at the Decatur plant. ADM acknowledged that it had failed to submit several Pharma-MACT reports; indicated that it had not complied with monitoring, repair, reporting, and recordkeeping requirements for refrigerant leaks in its chillers; and stated that it had not recorded required weekly inspections of the vitamin E baghouse. The disclosed matters were all included in a report regarding an internal compliance audit of the vitamin E manufacturing facility which ADM completed on November 24, 2004.

42. On March 3, 2005, U.S. EPA issued to ADM a Finding of Violation (FOV) detailing numerous Pharma-MACT violations at the Decatur vitamin E manufacturing facility.

43. On April 19, 2005, ADM submitted to U.S. EPA compliance status letters regarding the Stratospheric Ozone Standards.

44. On May 9, 2005, ADM submitted a plan and schedule for coming into compliance with the Pharma-MACT standards at the Decatur vitamin E manufacturing facility.

45. On June 10, 2005, U.S. EPA issued to ADM a second FOV alleging numerous Stratospheric Ozone Standard violations and permit violations regarding air pollution control equipment inspection and recordkeeping at the Decatur vitamin E manufacturing facility.

Alleged Violations

46. ADM failed to correctly identify the vitamin E manufacturing operation at the Decatur plant as being subject to the NESHAP for Pharmaceuticals Production, in violation of 40 C.F.R. §§ 63.4, 63.1250 and 63.1260.

47. ADM failed to identify storage tanks associated with the vitamin E manufacturing operation at the Decatur plant, in violation of 40 C.F.R. §§ 63.4 and 63.1253.

48. ADM failed to choose a process vent compliance standard for HAP emissions regarding the vitamin E manufacturing operation at the Decatur plant, in violation of 40 C.F.R. §§ 63.4 and 63.1254.

49. ADM failed to implement leak detection and repair (LDAR) regarding connectors, valves and pumps in HAP service in the vitamin E production areas at the Decatur plant, in violation of 40 C.F.R. §§ 63.4 and 63.1255.

50. ADM failed to comply with applicable wastewater standards regarding the vitamin E manufacturing operation at the Decatur plant, including failing to determine whether wastewater streams required control and failing to develop and implement a Maintenance Wastewater Plan (MWP), in violation of 40 C.F.R. §§ 63.4 and 63.1256.

51. ADM failed to conduct performance testing on a vitamin E mineral-oil scrubber and failed to conduct initial compliance demonstrations on process condensers and on condensers acting as air pollution control devices regarding the vitamin E manufacturing operation at the Decatur plant, in violation of 40 C.F.R. §§ 63.4 and 63.1257.

52. ADM failed to monitor the required parameters for the control devices used in the vitamin E manufacturing operation at the Decatur plant, in violation of 40 C.F.R. §§ 63.4 and 63.1258.

53. ADM failed to choose and identify compliance options and maintain required records regarding the vitamin E manufacturing operation at the Decatur plant, in violation of 40 C.F.R. §§ 63.4 and 63.1259.

54. ADM failed to submit a NOCSR and Periodic Reports required to demonstrate ongoing compliance regarding the vitamin E manufacturing operation at the Decatur plant, in violation of 40 C.F.R. §§ 63.4, 63.1252 and 63.1260.

55. ADM failed to develop and implement a startup, shutdown and malfunction plan (SSMP) for the vitamin E manufacturing operation at the Decatur plant, in violation of 40 C.F.R. § 63.6(e)(3)(i).

56. ADM failed to calculate and track refrigerant leak rates for nine process chillers in the vitamin E manufacturing operation at the Decatur plant, and failed to ensure that both the

initial and follow-up leak repair verification tests on the chillers were performed, in violation of 40 C.F.R. § 82.156(i).

57. ADM failed to comply with the reporting and recordkeeping requirements regarding refrigerant leak rates, leak location and repair, and system retrofit for nine process chillers in the vitamin E manufacturing operation at the Decatur plant, in violation of 40 C.F.R. § 82.166(m) and (o).

58. ADM failed to conduct visual inspections on a weekly basis of all air pollution particulate matter control equipment in the vitamin E manufacturing operation at the Decatur plant, as required by PSD Permit No. 93120004 and Title V/Title I Permit No. 96030038.

59. ADM failed to keep required records of visual inspections of all air pollution particulate matter control equipment in the vitamin E manufacturing operation at the Decatur plant, as required by PSD Permit No. 93120004 and Title V/Title I Permit No. 96030038.

Civil Penalty

60. Based on analysis of the factors specified in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e); the facts of this case; and ADM's cooperation and disclosures in this matter, prompt return to compliance, and agreement to perform the Supplemental Environmental Projects (SEPs) set out below, U.S. EPA has determined that an appropriate civil penalty to settle this action is $325,000.

61. ADM must pay the $325,000 civil penalty by cashier's or certified check, or by Electronic Funds Transfer (EFT), payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

62. ADM must send the check remittance to:

U.S. EPA - Region 5
P. O. Box 371531
Pittsburgh, PA 15251-7531

ADM must make Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message is: "D 68010727 Environmental Protection Agency."

63. A transmittal letter, stating ADM's name, complete address, the case docket number, and the billing document number must accompany the payment. ADM must write the case docket number and the billing document number on the face of the check. ADM must send copies of the check or EFT receipt and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Reginald A. Pallesen
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

64. This civil penalty is not deductible for federal tax purposes.

65. If ADM does not timely pay the civil penalty, or any stipulated penalties due under paragraph 80, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

66. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. ADM will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Projects

67. ADM agrees to complete two Supplemental Environmental Projects (SEPs) at the Decatur vitamin E manufacturing facility designed to protect the environment and public health by reducing fugitive emissions of Hazardous Air Pollutants from the vitamin E facility. The first SEP is an equipment replacement project. The second SEP is an enhanced Leak Detection and Repair (LDAR) project.

68. ADM must complete an equipment replacement SEP consisting of installation of 58 seal-less pumps and 15 seal-less agitators in methanol service at the Decatur vitamin E manufacturing facility.

69. ADM must spend at least $1,005,000 for the equipment replacement SEP.

70. ADM must submit a SEP completion report for the equipment replacement project to U.S. EPA within 27 months of the effective date of this CAFO. This completion report must contain the following information:

a. a detailed description of the SEP as completed;

b. a description of any operating problems and the actions taken to correct the problems; and

c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual costs of the goods and services.

71. ADM agrees to perform an enhanced LDAR SEP as follows:

a. Enhanced Monitoring. Perform LDAR monitoring for connectors, valves, pumps, and agitators in HAP service at the Decatur vitamin E manufacturing facility more frequently than required under the LDAR regulations, for a period of two (2) years, beginning on the effective date of this CAFO:

i. monitor all connectors at the vitamin E facility semi-annually for two cycles, and then annually if the leak rate remains below 0.5%; monitor all valves quarterly for two cycles, then semi-annually if the leak rate remains below 0.5%; and monitor pumps and agitators quarterly (pumps and agitators that have been replaced with seal-less equipment and are otherwise not subject to monitoring under the LDAR regulations are not required to be monitored under this CAFO);

ii. perform monitoring and report results per the Pharma-MACT and applicable requirements of the HON, 40 C.F.R. 63 Subparts GGG and H, using U.S. EPA Reference Method 21;

iii. utilize an instrument that meets Method 21 specifications;

iv. submit a schedule of the monitoring events to U.S. EPA (ADM may modify the schedule with 15 days advance written notice to U.S. EPA);

v. provide the results of each LDAR monitoring event to U.S. EPA within 60 days after the end of each calendar quarter.

b. More Stringent Leak Repair Standard. Utilize a reduced leak "repair action level" standard (below the regulatory leak definition) for connectors, valves, pumps, and agitators as follows: 250 ppm for connectors; 250 ppm for valves; 500 ppm for pumps; and 1000 ppm for agitators. These leak levels will trigger repair as described in the Pharma-MACT and applicable HON regulations at 40 C.F.R. Part 63, Subparts, GGG and H, but are not otherwise applicable for regulatory purposes.

c. Upgrading Components – New Technology. ADM may employ usual "first attempts" to repair a leaking component, in compliance with applicable regulations; however, if such attempts fail to repair the leak, ADM must:

i. evaluate and, if practicable, implement more aggressive alternatives to repair the leak (such as, for example, "drill and tap" repair technology for valves where there is no risk of product contamination, process interference, equipment damage, an explosion or other hazard or adverse reaction such that the valve would not be placed on the delay of repair list);[1] or

ii. evaluate and implement, as appropriate, valve and connector upgrades to utilize improved technology, or environmentally enhanced alternatives or processes or technology, to provide improved pollution prevention (such as audits for short-bolting, or other improvements for the different types of components).[2]

d. Internal Quality Assurance (QA)/Quality Control (QC) Audit Procedure. Establish guidelines and procedures to audit the LDAR program on a biannual basis. These QA/QC procedures will include, but are not limited to, the following:

i. identify components that are required to be in the LDAR program;

ii. ensure all components in the program are monitored at the appropriate frequency;

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[1] Each evaluation shall be documented with details of conclusions reached and actions taken. Implementation of an alternative is not required if the evaluation indicates that the alternative is not feasible or appropriate.

[2] Each evaluation shall be documented with details of conclusions reached and actions taken. Implementation of an upgrade or alternative is not required if the evaluation indicates that an upgrade or alternative is not feasible or appropriate.

iii. spot check LDAR personnel while conducting LDAR monitoring in the field;

iv. review all repair records for first attempts to be made within 5 days and final repairs within 15 days;

v. for all equipment placed on shutdown or delay of repair, ensure proper documentation and sign-offs have been put in place;

vi. review monitoring data and component counts (monitored components per day) for feasibility; and

vii. ensure proper calibration records and organic analyzer maintenance data are stored.

e. Root-Cause Analysis. Within one year from the date the CAFO is filed, perform an engineering analysis on monitoring results, beginning with results of the July 2004 monitoring through January 2007, to determine potential "root causes" and sources of leaks, evaluating at a minimum the following:

i. trends in leaks due to component service (gas, liquid), process conditions (temperature, pressure, vibration, etc.), and material compatibility issues; and

ii. trends in leaks due to equipment type and/or manufacturer.

f. Prevention of Component Leaks. Develop a maintenance and corrective action program, incorporating the results of the Root-Cause Analysis, including processes or technologies that provide improved prevention measures.

g. Reporting. Provide U.S. EPA with Annual Reports which describe steps ADM is taking to maintain and ensure compliance with the requirements of the applicable regulations and this CAFO. Each Annual Report will be submitted by the anniversary date of the CAFO, and contain information including the following:

i. the results of the LDAR monitoring, including individual monitoring data (preferably in electronic form) and the Leak Repair program;

ii. a description of the equipment leaks reviewed under the Root-Cause Analysis, and the steps taken to correct them;

iii. a summary of any improvements to the monitoring program that ADM's experience indicates might be helpful in identifying, preventing, reducing, and/or repairing equipment leaks; and

iv. documentation of all leak evaluations under the monitoring and repair program conducted during the year.

72. ADM must spend at least $15,000 for the enhanced LDAR SEP (which may include documented, "in-house" expenditures).

73. ADM must submit a SEP completion report for the enhanced LDAR project to U.S. EPA within 27 months of the effective date of this CAFO. This completion report must contain the following information:

a. a detailed description of the SEP as completed;

b. the results of the LDAR monitoring (submitted in electronic form on a spreadsheet on a compact disc);

c. a description of the equipment leaks detected during two-year period, including both leaks above the regulatory leak definition and leaks above the repair action levels set out above; a list of all repairs made, including dates of leak detection, first attempt at repair, and final repair;

d. a summary of the Root-Cause Analysis; and

e. an estimate of the costs incurred to implement the enhanced LDAR SEP.

74. ADM certifies that it is not required to perform or develop either the equipment replacement SEP or the enhanced LDAR SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. ADM further certifies that it has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action.

75. U.S. EPA may inspect the Decatur vitamin E manufacturing facility at any time to monitor ADM's compliance with this CAFO's SEP requirements. Absent exigent

circumstances, U.S. EPA will provide reasonable notice of any such inspection and conduct the inspection during normal business hours.

76. ADM must submit all notices and reports required by this CAFO by first class mail to:

> Attn: Compliance Tracker (AE-17J)
> Air Enforcement and Compliance Assurance Branch
> Air and Radiation Division
> U.S. Environmental Protection Agency, Region 5
> 77 West Jackson Blvd.
> Chicago, Illinois 60604-3511

77. In each report that ADM submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by a responsible corporate official or an authorized designee:

> I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

78. Following receipt of each SEP completion report described above, U.S. EPA will notify ADM in writing that:

> a. ADM has satisfactorily completed the SEP and the SEP report;
>
> b. there are deficiencies in the SEP as completed or in the SEP report as submitted, and U.S. EPA will give ADM a reasonable amount of time to correct the deficiencies; or
>
> c. ADM has not satisfactorily completed the SEP or the SEP report; it is unreasonable to believe that ADM will complete the SEP or the SEP report or correct any deficiencies in the SEP or the SEP report, even if allowed additional time to do so; and, therefore, U.S. EPA will seek stipulated penalties as provided below.

79. If paragraph 78(b) of this CAFO has been invoked, ADM may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of ADM's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give ADM a written decision on its objection. ADM will comply with any requirements that U.S. EPA imposes in its decision, to the extent that such requirements are consistent with the obligations set forth in this CAFO. If ADM does not correct the SEP and/or the SEP report as required by U.S. EPA's decision, ADM will pay stipulated penalties as provided below.

80. If ADM violates any requirement of this CAFO relating to the SEPs, and has failed to correct any deficiencies as provided above, ADM must pay stipulated penalties to the United States as follows:

a. if ADM spends less on the equipment replacement SEP than the $1,005,000 amount set forth in paragraph 69 above, regardless of whether or not it completes the SEP, ADM must pay a stipulated penalty equal to the difference between the amount it actually spent on the SEP and the $1,005,000 set forth in paragraph 69;

b. if ADM spends the $1,005,000 set forth in paragraph 69, but fails to complete the equipment replacement SEP in a timely manner as required by this CAFO, ADM must pay a stipulated penalty calculated by determining the percentage of the SEP not satisfactorily completed, and then multiplying $500,000 by that "non-completed percentage" (for example, if 70% of the SEP was completed, with the full expenditure of $1,005,000, the stipulated penalty would be $500,000 x 30%, equaling $150,000);

c. in addition, ADM must pay a stipulated penalty in the amount of $50,000 for any failure to complete the equipment replacement SEP report, regardless of the amount of its expenditures on, or percentage of completion of, the equipment replacement SEP;

d. if ADM fails to complete the enhanced LDAR SEP, including the enhanced LDAR SEP completion report, in a timely manner, as required by this CAFO, ADM must pay a stipulated penalty in the amount of $22,500.

81. U.S. EPA's determinations of whether ADM completed each SEP as required by the CAFO will bind ADM, to the extent that such determinations are consistent with the obligations set forth in this CAFO.

82. ADM must pay any stipulated penalties within 30 days of receiving U.S. EPA's written demand for the penalties. ADM will use the method of payment specified in paragraphs 61, 62 and 63, above, and will pay interest and nonpayment penalties on any overdue amounts.

83. Any statement to the general public that ADM makes referring to the SEPs must include the following language: "ADM undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against ADM for alleged violations of Clean Air Act requirements regarding pharmaceutical production and stratospheric ozone standards."

84. If an event occurs which causes or may cause a delay in completing either SEP as required by this CAFO:

a. ADM must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), ADM's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. ADM must take all reasonable actions to avoid or minimize any delay. If ADM fails to notify U.S. EPA according to this paragraph, U.S. EPA may deny an extension of time to complete the SEP on that basis.

b. If the parties agree that circumstances beyond the control of ADM caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of ADM caused or may cause a delay in completing the SEP, U.S. EPA will notify ADM in writing of its decision and any delays in completing the SEP will not be excused.

d. ADM has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

Final Statement

85. This CAFO resolves only ADM's liability for federal civil penalties for the facts and violations alleged in this CAFO.

86. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

87. This CAFO does not affect ADM's responsibility to comply with the Clean Air Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 85 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA.

88. ADM hereby certifies that, as of the date of this CAFO, it is complying fully with the NESHAP for Pharmaceutical Production, the Stratospheric Ozone Standards, and its permit requirements for baghouse inspection and recordkeeping.

89. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine ADM's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

90. The terms of this CAFO bind ADM, and its successors, and assigns.

91. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

92. Each party agrees to bear its own costs and attorneys' fees in this action.

93. This CAFO terminates once all civil penalties have been paid, and U.S. EPA has approved both SEP completion reports or ADM has paid all applicable stipulated penalties regarding the SEPs.

94. This CAFO constitutes the entire agreement between the parties.

CONSENT AGREEMENT AND FINAL ORDER
Archer Daniels Midland Company
Docket No. CAA-05-2006-0031

U.S. Environmental Protection Agency, Complainant

9/20/06
Date

Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

CONSENT AGREEMENT AND FINAL ORDER
Archer Daniels Midland Company
Docket No. CAA-05-2006-0031

Archer Daniels Midland Company, Respondent

9/14/06
Date

Dennis C. Garceau JRC
Dennis Garceau
Vice President/Director of Group Operations
Archer Daniels Midland Company

CONSENT AGREEMENT AND FINAL ORDER
Archer Daniels Midland Company
Docket No. CAA-05-2006-0031

Final Order

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Final Order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9/22/06
Date

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **CAA-05-2006-0031** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Mr. Lee Cunningham by placing them in custody of the United States Postal Service addressed as follows:

Mr. Lee Cunningham, Counsel
Archer Daniels Midland
4666 Faries Parkway
Decatur, Illinois 62526

on the 25th day of September 2006.

Shanee Rucker
Shanee Rucker,
Administrative Assistant
AECAS(MI/WI)

Certified Mail Receipt Number: 7001 0320 0006 1447 8959